

CONCURRING STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

RE: Final Report on Sports Migration
PP Docket 93-21

Sports in America is more than just a national pastime -- sports is a national love affair. It is for this reason that I have always approached the issue of sports migration with a caring and careful eye toward ensuring that America's favorite sports are available on free, over-the-air television. This continuing concern is why I am concurring in, rather than voting affirmatively for, this item.

In this proceeding, we have received little evidence of migration in sports generally. However, we have received some evidence, and recognize that there is a problem, in the area of college football -- in particular, a decrease in the number of games aired on local broadcast stations involving local teams. Nonetheless, we conclude in our Report that, because we cannot isolate the cause of the decline in local broadcasts, and because new college football contracts now being negotiated may lead to an increase in network coverage, no legislative or regulatory recommendations are necessary. We promise that we will take action if any significant threat to access to sports programming develops in the future. In particular, we urge parties to file complaints with the FCC in the event current or future college football contracts constrain local stations' access to local team games.

I recognize that we do not have an extensive record with respect to college football. However, we do have data on the record which indicates that the number of non-network college football games has decreased markedly. In a study of nine television markets between 1984 and 1993, INTV demonstrated that local, non-network broadcasts declined from 162 to 42. **This is, in my view, a significant piece of evidence.** What this tells me is that, in at least nine markets throughout the country, television viewers may not be able to watch their local college football teams without having to pay. These viewers have the option of either purchasing cable to watch their local teams, or watching a game aired by a broadcast network involving teams of national interest. While these games may have national appeal, in many markets, the hottest ticket in town is local college football; anything else is a distant second.

I am not comfortable in turning away from an evident problem simply because we feel we cannot ascertain with any certainty the source of the problem. Thus, my preference in this proceeding would have been to take what I feel is the most logical next step once one has identified a problem, the extent of which is unclear. That next step could have been to try to ascertain the extent of

the problem, perhaps through a Further Notice focused on college football, or through the conduct of a nationwide study. I am even less comfortable speculating -- and relying on this speculation in our findings -- that the new contracts that will be entered into after the break-up of the CFA in 1995 will lead to the airing of more local games on local stations. If the trend demonstrated by INTV in nine markets were to continue, and if the FCC were to discontinue its oversight role in this area, a more logical prediction would be that even fewer local games will be aired on local stations after the break-up of the CFA. Even with FCC oversight, I am not sure that this result would be avoided.

However, this item ensures that some level of oversight by the Commission will be maintained, and for this reason I am concurring in the Final Report. My colleagues have agreed to continue to monitor this situation very carefully in the future, and, more specifically, to vigorously and promptly pursue complaints filed in the area of college football. In addition, we will convey to the Department of Justice and the Federal Trade Commission our findings in this proceeding, calling their attention in particular to the issue of preclusive college football contracts.

Nevertheless, my comfort level on this issue is still very low. As a result, if this problem with college football broadcasts --or, for that matter, with the broadcast of any type of sports-- begins to worsen, or if specific instances of artificial and unfair contractual constraints are demonstrated, I will respond promptly and aggressively, and urge my colleagues to do likewise.

For the above reasons, I concur.

June 9, 1994

**SEPARATE STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT**

RE: Inquiry into Sports Programming Migration, Final Report (PP Docket No. 93-21)

In this Final Report, the Commission finds that there has not been significant migration of sports programming from broadcast to subscription media. The Final Report does express concern, however, regarding a decline in broadcast coverage of college football games in some markets. As a result, the Commission has stated its intention to continue to monitor sports programming availability.

I write separately in support of the findings and conclusions of the Final Report. I also support the recommendation that no legislative or regulatory actions are necessary concerning sports programming migration. With respect to the decline of college football broadcasts in some markets between 1984 and 1993, it appears that the use of preclusive contracts by certain conferences has restricted the availability of college football programming in specific broadcast markets. The Commission has thoroughly evaluated the record in this proceeding, and I support the conclusion that the cause of the decline in local college football broadcasts is uncertain. Given the scope of this proceeding, I believe that we are unable to determine that the decreased college football broadcasts in certain markets are caused solely by the practices of broadcasters and cable entities; the practices of other participants in those negotiated contracts, such as the College Football Association or certain conferences, also must be considered. In this regard, it is important to observe that the instances of the apparent concerns were isolated in specific markets and have not necessarily continued. The record shows that local television stations who alleged restricted opportunities for broadcasts of local teams' games have been able to carry the requested games during subsequent seasons.¹ I believe that these particular occurrences of declining broadcast opportunities in local markets must be balanced with the record's evidence that in other markets, consumers -- as well as certain college football conferences and universities -- may benefit from the opportunities for schools to pursue local cable carriage, especially in situations where local broadcast television stations previously chose not to carry those events.² The proceeding's record raises no further evidence of declining broadcast coverage due to migration, and I, therefore, support the conclusion that no additional intervention to promote free access to sports programming is warranted at this time.

The Final Report includes a mechanism for monitoring the developments in the broadcast

¹ See Letter submitted by Association of Independent Television Stations, June 1, 1994.

² See, e.g., Comments of Colorado State University, the Southland Conference, the University of Pittsburgh, and the Sun Belt Conference.

of college football programming. In particular, I support the Commission's effort to monitor activity in broadcast sports programming through the complaint process. Parties are urged to file legitimate complaints in the event that current or future college football contracts unfairly constrain the access of broadcast television stations to local college football games in relation to cable coverage of such sporting events. As a result, the Commission will have the opportunity to pursue any future concerns regarding college football broadcasts as raised in those complaints. I believe that this result, rather than taking further action at this time, strikes the appropriate balance due to the need to (1) observe the results of future practices affecting college football broadcasts following the dissolution of the College Football Association at the end of the coming season; and (2) allow for the resolution of pending litigation. I, therefore, support the Final Report's recommendation that no legislative or regulatory actions are necessary in the area of sports programming at this time.